

ARTICLE XIV. WATERSHED REGULATIONS

Section 14.01. General regulations.

1. *Authority and enactment.* The Legislature of the State of North Carolina has, in Chapter 160A, Article Section 174, General Ordinance Authority, and in Chapter 143, Article 21, Watershed Protection Rules, delegated the responsibility or directed local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. The governing board of the City of Salisbury does hereby ordain and enact into law the following articles as the Watershed Protection Ordinance of the City of Salisbury, which is Article **XIV**, Watershed Regulations, of Appendix B, Zoning, of the Salisbury City Code.

2. *Jurisdiction.* The provisions of this article and its regulations shall apply within the areas designated as a public water supply watershed by the North Carolina Environmental Management Commission and shall be defined and established on the Official Zoning Map of the City of Salisbury as described in Article III, section 3.01, of this Zoning Ordinance, which is Appendix B of the Salisbury City Code.

3. *Exceptions to applicability.*

- (A) Nothing contained herein shall repeal, modify, or amend any federal or state law or regulation, or any ordinance or regulation pertaining thereto; nor shall any provisions of this article amend, modify, or restrict any provisions of the Code of Ordinances for the City of Salisbury. However, the adoption of this article shall and does amend any and all ordinances, resolutions, and regulations in effect at the time of the adoption of this article that may be construed to impair or reduce the effectiveness of this article or to conflict with any of its provisions.
- (B) It is not intended that these regulations interfere with any easement, covenants or other agreements between parties. However, if the provisions of these regulations impose greater restrictions or higher standards for the use of a building or land, then the provisions of these regulations shall control.
- (C) Existing development, as defined in this ordinance, is not subject to the requirements of this ordinance. Expansions to structures classified as existing development must meet the requirements of this ordinance, however, the built-upon area of the existing development is not required to be included in the density calculations.
- (D) A pre-existing lot owned by an individual prior to the effective date of this ordinance, regardless of whether or not a vested right has been established, may be developed for single-family residential purposes without being subject to the restrictions of this ordinance. However, this exemption is not applicable to multiple contiguous lots under single ownership.

4. *Administration and enforcement.* The zoning administrator shall serve as the watershed administrator, whose powers and duties shall be as outlined in Article **XV**. In addition to those powers and duties, the zoning administrator, in the administration of Article **XIV**, Watershed Regulations, shall do the following:

- (A) Keep records for the watershed which shall include the following:
 - (1) Total acres of non-critical watershed area;
 - (2) Total acres eligible to be developed;

- (3) Individual records for each project with the following information:
 - (a) Location;
 - (b) Acres;
 - (c) Site plan;
 - (d) Use;
 - (e) Stormwater management plan as applicable; and
 - (f) Inventory of hazardous materials as applicable.
- (B) Keep records of all amendments to Article **XIV**, Watershed Regulations, and shall provide copies of all amendments to the supervisor of the classification and standards group, water quality section, division of environmental management.
- (C) Keep records of variances to Article **XIV**, Watershed Regulations. This record shall be submitted to the supervisor of the standards group, water quality section, division of Environmental Management by January 1 of each year and shall provide a description of each project receiving a variance and the reasons for granting the variance.
- (D) Notify and allow a reasonable comment period by the City of Salisbury when considering or requesting all exemptions (variances) to give to all other local governments having jurisdiction within the watershed area governed by the rules and the entity using the water supply for consumption.

5. *Appeals.* The zoning board of adjustment shall serve as the watershed review board, whose powers and duties shall be as outlined in Article **XVI**, specifically section **16.06**. Appeals from this article to the zoning board of adjustment shall be as outlined in section **16.04**.

- (A) *Variances.* If an application to the zoning board of adjustment calls for the granting of a "major variance" (as defined in section **14.02**, definition 22(a)), and if the zoning board of adjustment decides in favor of granting the variance, the board shall prepare a preliminary report of the hearing, which shall include:

- The variance application;
- The hearing notices;
- The evidence presented;
- Motions, offers of proof, objections to evidence, and rulings on them;
- Proposed findings and exceptions;
- The proposed decision, including all conditions proposed to be added to the permit.

The preliminary record shall be sent to the environmental management commission for its review as follows:

- (1) If the commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure no reasonable return from, nor make any practical use of the property unless the

proposed variance is granted, and (2) the variance, if granted, will not result in a serious threat to the water supply, then the commission shall approve the variance as proposed or approve the proposed variance with conditions and stipulations. The commission shall prepare a commission decision and send it to the zoning board of adjustment. If the commission approves the variance as proposed, the board shall prepare a final decision granting the proposed variance. If the commission approves the variance with conditions and stipulations, the board shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.

- (2) If the commission concludes from the preliminary record that the variance qualifies as a "major variance" and that (1) the property owner can secure a reasonable return from or make a practical use of the property without the variance or (2) the variance, if granted, will result in a serious threat to the water supply, then the commission shall deny approval of the variance as proposed. The commission shall prepare a commission decision and send it to the zoning board of adjustment. The board shall prepare a final decision denying the variance as proposed.

(B) *Subdivision approval.* See Appendix A, Subdivision Ordinance.

(C) *Public health.* See section **14.04**.

(D) *Approval of all development greater than the low density option.* All appeals from the zoning board of adjustment shall be as outlined in section **16.07**.

6. *Changes and amendments to this article.* The amendment procedure to Article XIV, Watershed Regulations, shall be as outlined in section **18.01** Amendment Procedure, plus the following:

- (A) No action shall be taken until the proposal has been submitted to the zoning board of adjustment for review and recommendations. If no recommendation has been received from the zoning board of adjustment within forty-five (45) days after submission of the proposal to the chairman of the zoning board of adjustment, the city council may proceed as though a favorable report has been received.
- (B) Under no circumstances shall the city council adopt such amendments, supplements or changes that would cause this article to violate the watershed protection rules as adopted by the N.C. Environmental Management Commission. All amendments must be filed with the N.C. Division of Environmental Management, N.C. Division of Environmental Health, and the N.C. Division of Community Assistance.

7. *Penalties and remedies.* Penalties shall be as outlined in section **15.09**, Penalties for violation.

Remedies shall be as outlined in section **15.10**, Remedies. In addition, the N.C. Environment Management Commission may assess civil penalties in accordance with G.S. 143-215.6(a). Each day that the violation continues shall constitute a separate offense.

(Ord. No. 1993-42, § 4, 6-1-93; Ord. No. 1994-20, § 1, 5-17-94; **Ord. No. 1996-35**)

Section 14.02. Definitions.

The definitions in Article **XIV**, section **14.02**, shall be applicable only to this article. In case of conflicts with Article IV, section 4.02, or elsewhere in this Zoning Ordinance, those definitions shall remain applicable to all articles other than Article **XIV**, Watershed Regulations. If a word or term is not defined below, then those definitions found in Article IV, section 4.02, shall be applicable.

1. *Agricultural use.* The use of waters for stock watering, irrigation, and other farm purposes.
2. *Animal unit.* A unit of measurement developed by the U. S. Environmental Protection Agency that is used to compare different types of animal operations.
3. *Best Management Practices (BMP).* A structural or nonstructural management based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.
4. *Buffer.* An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.
5. *Building.* Any structure having a roof supported by columns or by walls, and intended for shelter, housing, or enclosure of persons, animals, or property. The connection of two buildings by means of an open porch, breezeway, passageway, carport, or other such open structure, with or without a roof, shall not be deemed to make them one building.
6. *Built-upon area.* Built-upon areas shall include that portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel roads, recreation facilities (e.g. tennis courts), etc. (Note: wooden slatted decks and the water area of a swimming pool are considered pervious.)
7. *Cluster development.* The group of buildings in order to conserve land resources and provide for innovation in the design of the project. This term includes nonresidential development as well as single-family residential subdivisions and multifamily developments that do not involve the subdivision of land.
8. *Composting facility.* A facility in which only stumps, limbs, leaves, grass and untreated wood collected from land clearing or landscaping operations is deposited.
9. *Customary home occupations.* Any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof. Provided further that no mechanical equipment is installed or used except as is normally used for domestic or professional purposes, and that not over twenty-five (25) percent of the total floor space of any structure is used for the occupation. No home occupation shall be conducted in any accessory building except for the storage and service of a vehicle that is drive off-site, such as a service repair truck, delivery truck, etc.
10. *Development.* Any land disturbing activity which adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil.
11. *Discharging landfill.* A facility with liners, monitoring equipment and other measures to detect and/or prevent leachate from entering the environment and in which the leachate is treated on-site and discharged to a receiving stream.
12. *Existing development.* Those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of this ordinance based on at least one of the following criteria:

- (a) Substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project, or
 - (b) Having an outstanding valid building permit as authorized by the General Statutes (G.S. 160A-385.1), or
 - (c) Having expended substantial resources (time, labor, money) and having an approved site specific or phased development plan as authorized by the General Statutes (G.S. 160A-385.1).
- 13. *Hazardous material.* Any substance listed as such in: SARA section 302, Extremely Hazardous Substances, CERCLA Hazardous Substances, or Section 311 of CWA (oil and hazardous substances).
- 14. *Industrial development.* Any nonresidential development that requires an NPDES permit for an industrial discharge and/or requires the use or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity.
- 15. *Landfill.* A facility for the disposal of solid waste on land in a sanitary manner in accordance with Chapter 130A Article 9 of the N.C. General Statutes. For the purpose of this ordinance, this term does not include composting facilities.
- 16. *Nonresidential development.* All development other than residential development, agriculture and silviculture.
- 17. *Protected area.* The area adjoining and upstream of the critical area in a WS-IV water supply in which protection measures are required. The boundaries of the protected areas are defined as extending five (5) miles upstream and draining to water supply reservoirs (measured from the normal pool elevation) to the ridge line of the watershed (whichever comes first); or ten (10) miles upstream and draining to the intake located directly in the stream or river (run-of-the-river), or to the ridge line of the watershed (whichever comes first).
- 18. *Residential development.* Buildings for residence such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, etc. and their associated outbuildings such as garages, storage buildings, gazebos, etc. and customary home occupations.
- 19. *Single-family residential.* Any development where: 1) no building contains more than one (1) dwelling unit, 2) every dwelling unit is on a separate lot, and 3) where no lot contains more than one dwelling unit.
- 20. *Street (road).* A right-of-way for vehicular traffic which affords the principal means of access to abutting properties.
- 21. *Structure.* Anything constructed or erected, including but not limited to buildings, which requires location on the land or attachment to something having permanent location on the land.
- 22. *Toxic substance.* Any substance or combination of substances (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in

reproduction or growth) or physical deformities in such organisms or their off spring or other adverse health effects.

23. *Variance.* A permission to develop or use property granted by the Watershed Review Board relaxing or waiving a water supply watershed management requirement adopted by the Environmental Management Commission that is incorporated into this ordinance.
- 23a. *Variance, major.* A variance that results in any one (1) or more of the following:
- (1) The complete waiver of a management requirement;
 - (2) The relaxation, by a factor of more than ten (10) percent, of any management requirement that takes the form of a numerical standard;
 - (3) The relaxation of any management requirement that applies to a development proposal intended to qualify under the high density option.
- 23b. *Variance, minor.* A variance that does not qualify as a major variance.
24. *Water dependent structure.* Any structure for which the use requires access to or proximity to or citing within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water dependent structures.
25. *Watershed.* The entire land area contributing surface drainage to a specific point (e.g. the water supply intake.)
26. *Watershed administrator.* An official or designated person responsible for administration and enforcement of this Article.

For the purpose of this article, certain words shall be interpreted in accordance with Article IV, section 4.01 of this Zoning Ordinance.

(Ord. No. 1993-42, § 4, 6-1-93; Ord. No. 1994-20, § 2, 5-17-94; **Ord. No. 1996-35**)

Section 14.03. Development regulations.

1. *Establishment of watershed area.* For the purpose of this Article, the following watershed area may be applicable:

WS-IV-PA (Protected Area), which shall be shown on the Official Zoning Map of the City of Salisbury as an overlay area.

2. *Watershed area described.* WS-IV Watershed Area - Protected Area (WS-IV-PA). Only new development activities that require an erosion/sedimentation control plan under state law or approved local government program are required to meet the provisions of this ordinance when located in a WS-IV watershed. In order to address a moderate to high land use intensity pattern, single-family residential uses shall develop at a maximum of two dwelling units per acre. All other residential and nonresidential development shall be allowed at a maximum of twenty-four (24) percent built-upon area. A maximum of three dwelling units per acre or thirty-six (36) percent built-upon area is allowed for projects without a curb and gutter street system.

- (A) *Uses allowed:*

- (1) Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.
 - (2) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).
 - (3) Residential development.
 - (4) Nonresidential development, excluding the storage of toxic and hazardous materials unless a spill containment plan is implemented.
- (B) *Density and built-upon limits:*
- (1) Single-family residential--Development shall not exceed two (2) dwelling units per acre, as defined on a project by project basis. No residential lot shall be less than one-half (1/2) acre, or one-third (1/3) acre for projects without a curb and gutter system, except within an approved cluster development.
 - (2) All other residential and nonresidential--Development shall not exceed twenty-four (24) percent built-upon area on a project by project basis. For projects without a curb and gutter street system, development shall not exceed thirty-six (36) percent built-upon area on a project by project basis. For the purpose of calculating built-upon area, total project area shall include acreage in the tract on which the project is to be developed.

3. *Cluster development.* Clustering of development is allowed under the following conditions:

- (A) Minimum lot sizes are not applicable to single-family cluster development projects; however, the total number of lots shall not exceed the number of lots allowed for single-family detached developments in watershed area described.
- (B) All built-upon area shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow.
- (C) The remainder of the tract shall remain in a vegetated or natural state. Where the development has an incorporated property owners association, the title of the open space area shall be conveyed to the association for management. Where a property association is not incorporated, a maintenance agreement shall be filed with the property deeds.

4. *Existing development.* Any existing development as defined in this ordinance may be continued and maintained subject to the provisions provided herein. Expansions to structures classified as existing development must meet the requirements of this ordinance, however, the built-upon area of the existing development is not required to be included in the density calculations.

- (A) *Vacant lots.* This category consists of vacant lots for which plats or deeds have been recorded in the office of the Register of Deeds of Rowan County. Lots may be used for any of the uses allowed in the watershed area in which it is located, provided the following:
 - (1) Where the lot area is below the minimum specified in this ordinance, the zoning administrator is authorized to issue a watershed protection permit.
 - (2) Notwithstanding the foregoing, whenever two (2) or more contiguous residential vacant lots of record are in single ownership at any time after the adoption of this ordinance and such lots individually have less area than the minimum requirements for residential purposes for the watershed area in which such lots

are located, such lots shall be combined to create one (1) or more lots that meet the standards of this ordinance, or if this is impossible, reduce to the extent possible the nonconformity of the lots.

- (B) *Occupied lots.* This category consists of lots, occupied for residential purposes at the time of the adoption of this ordinance. These lots may continue to be used provided that whenever two (2) or more adjoining lots of record, one of which is occupied, are in single ownership at any time after the adoption of this ordinance, and such lots individually or together have less area than the minimum requirements or residential purposes for the watershed area in which they are located, such lots shall be combined to create lots which meet the minimum size requirements or which minimize the degree of nonconformity.
- (C) *Uses of land.* This category consists of uses existing at the time of adoption of this ordinance where such use of the land is not permitted to be established hereafter in the watershed area in which it is located. Such uses may be continued except as follows:
 - (1) When such use of land has been changed to an allowed use, it shall not thereafter revert to any prohibited use.
 - (2) Such use of land shall be changed only to an allowed use.
 - (3) When such use ceases for a period of at least one (1) year, it shall not be reestablished.
- (D) *Reconstruction of buildings or built-upon areas.* Any existing building or built-upon area not in conformance with the restrictions of this ordinance that has been damaged or removed may be repaired and/or reconstructed, except that there are no restrictions on single-family residential development, provided:
 - (1) Repair or reconstruction is initiated within twelve (12) months and completed within two (2) years of such damage.
 - (2) The total amount of space devoted to built-upon area may not be increased unless stormwater control that equals or exceeds the previous development is provided.

(Ord. No. 1993-42, § 4, 6-1-93; Ord. No. 1994-20, § 3, 5-17-94)

Section 14.04. Public health regulations.

1. *Public health.* No activity, situation, structure or land use shall be allowed within the watershed which poses a threat to water quality and the public health, safety and welfare. Such conditions may arise from inadequate on-site sewage systems which utilize ground absorption; inadequate sedimentation and erosion control measures; the improper storage or disposal of junk, trash or other refuse within a buffer area; the absence or improper implementation of a spill containment plan for toxic and hazardous materials; the improper management of stormwater runoff; or any other situation found to pose a threat to water quality.

2. Abatement.

- (A) The zoning administrator shall monitor land use activities within the watershed areas to identify situations that may pose a threat to water quality.
- (B) The zoning administrator shall report all findings to the zoning board of adjustment. The zoning administrator may consult with any public agency or official and request recommendations.

- (C) Where the zoning board of adjustment finds a threat to water quality and the public health, safety and welfare, the board shall institute any appropriate action or proceeding to restrain, correct or abate the condition and/or violation.

(Ord. No. 1993-42, § 4, 6-1-93)

Section 14.05. Inventory of hazardous materials.

There are no known industries that use, store, or manufacture hazardous materials within the watershed area.

(Ord. No. 1994-20, § 4, 5-17-94)